IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

Crl.MC.No. 2633 of 2007()

SC.92/2005 of ADDITIONAL DISTRICT AND SESSIONS COURT (ADHOC-II), THODUPUZHA.

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PETITIONER: ACCUSED

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1. REGI, S/O SCARIA,
   KALOOR HOUSE, MUTHIRAPUZHA KARA,
   KONNATHADY VILLAGE, UDUMBANCHOLA TALUK.

2. SURESH, S/O SUBRAMANIYAN,
   KIZHAKKENCHERRIYIL HOUSE, VELLATHOOVAL KARAL,
   VELLATHOOVAL VILLAGE, DEVIKULAM TALUK.

3. BINOY, S/O THAMPI,
   MANALATH HOUSE, VELLATHOOVAL KARA,
   KUNCHITHANNY VILLAGE.

4. SABU, S/O STEPHEN,
   KAMBIPURAYIDATHIL HOUSE,
   VELLATHOOVAL KARA, VELLATHOOVAL VILLAGE,
   DEVIKULAM TALUK.

5. KOCHUMON, S/O STEPHEN,
   KAMBIPURAYIDATHIL HOUSE, VELLATHOOVAL KARA,
   VELLATHOOVAL VILLAGE, DEVIKULAM TALUK.

6. BAIJU, S/O GEPORGE,
   MEEMANAPUTHENPURACKAL HOUSE,
   PANNIYARKUTTY KARA, KUNCHITHANNY VILLAGE,
   DEVIKULAM TALUK.

7. SANTHOSH, S/O MONEY,
   PEEDIKAPARAMBU HOUSE, S.VALAVU BHAGOM,
   KONNATHADY VILLAGE.

BY ADV. SRI.RAINGE KODUVATH
SRI.VIJU ABRAHAM
SRI.JOY C. PAUL

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
CIRCLE INSPECTOR OF POLICE, MUNNAR, THROUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 22/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2633 of 2007

Dated this the 22nd day of August 2007

O R D E R

This petition under Section 482 Cr.P.C has been filed by the petitioners who face indictment in a prosecution in a sessions case for offences punishable inter alia under Section 307 I.P.C. The soul of their grievance is that the learned Sessions Judge has permitted two additional witnesses to be examined as witnesses for the prosecution. Those witnesses have not been cited as witnesses earlier by the prosecution. Their statements have not admittedly been recorded in the course of investigation. No application under Section 311 Cr.P.C has been filed requesting that such persons may be examined as witnesses. The petitioners were kept in dark as to the purpose for which such witnesses are to be examined. Petitioners were not informed that those witnesses will be producing any documents.

2. The prosecution evidence was closed. At the stage of 313 examination, application was filed by the Prosecutor to reopen the evidence and recall a witness for further examination. Along with that, a witness schedule was also filed

by the Prosecutor. The learned Magistrate allowed the said request to re-open the case; but in that order, it is also directed that the additional witnesses can be examined. Four additional witnesses were cited and one witness already examined was requested to be recalled. That one witness had already been recalled and examined. Two of the remaining four witnesses are witnesses who were cited by the prosecution initially; but they were not earlier examined. The petitioners, therefore, do not make a grievance about those three witnesses now.

3. The learned counsel for the petitioner submits that at any rate, permission granted to the prosecution to examine these two additional witnesses who were not cited by the prosecution and whose statements have not earlier been recorded is most unjustified. They are witnesses 1 and 2 - Daniel and Sasi Kumar, shown in the additional witnesses as witnesses 1 and 2. Of these, the said Daniel has already been examined as PW16 in chief. It is, at that stage, the petitioners have come before this court to interfere with the order granting permission for examination of those additional witnesses.

4. Those additional witnesses, it now turns out, have been examined only to prove that the vehicle in which the

miscreants had allegedly travelled is a vehicle which was transferred in the name of one of the accused by an agreement. This is the relevance of the examination of the first witness Daniel. The second witness is cited to prove the hand writing in the document under which such transfer was made.

5. The learned counsel for the petitioner prays that powers under Section 482 Cr.P.C may be invoked to quash the order and to recall the permission which is granted to the prosecution to examine these two witnesses. Such examination results in prejudice to the accused, it is contended.

6. The learned Public Prosecutor opposes the application. Their evidence is vitally relevant for a proper determination of the disputes in the case. It cannot be held that permission granted to the prosecution to examine those two witnesses will in anyway result in prejudice or miscarriage of justice, urges the learned Public Prosecutor.

7. I have considered the submissions of both sides. I must alertly remind myself of the nature, quality and contours of the jurisdiction which I am called upon to invoke and exercise. The jurisdiction which is sought to be invoked is the extraordinary inherent jurisdiction. Such jurisdiction is sought

to be invoked against an interlocutory order passed in the proceedings. It cannot be disputed that the learned Magistrate has jurisdictional competence to permit the prosecution to adduce any evidence. That is the mandate of the stipulations of Section 231 Cr.P.C. All such evidences as may be adduced in support of the prosecution can be received in evidence as per the mandate of Section 231(1) Cr.P.C. But of course, every criminal court must ensure that such production of evidence does not result in any failure or miscarriage of justice.

8. The question then is whether grant of permission to examine these two witnesses results in failure or miscarriage of justice. I shall only observe that at the present stage and with the available inputs, it is not possible for this court to come to a conclusion that such permission granted to examine the two additional witnesses referred above has resulted in any failure or miscarriage of justice. I may hasten to observe that I do not intend to express any final opinion in the matter. It shall be open to the petitioners to raise this contention before the learned Sessions Judge and at later stages before the superior courts if the matter reaches a superior court, that the evidence of such additional witnesses is liable to be eschewed and not to be

considered for the reason that it results in miscarriage of justice. The law frowns upon challenge against interlocutory orders in the course of the proceedings. This policy of the law is well reflected in Section 397(2) Cr.P.C which proscribes any challenge against interlocutory order in revision. I am satisfied that it is not necessary now to invoke the powers under Section 482 Cr.P.C to interfere with the impugned order. The question can be left open. If necessary, the impugned order can also be challenged by the petitioner at appropriate later stages.

9. With the above observations, this Criminal Miscellaneous Case is dismissed. I may hasten to observe that the dismissal of this Criminal Miscellaneous Case will not in any way fetter the rights of the petitioners to challenge the impugned order, if necessary, at a later stage before superior courts and also to contend before the learned Sessions Judge himself that the examination of these two witnesses have resulted in failure/miscarriage of justice to them.

Hand over copy of this order to the learned counsel for the petitioner today itself.

(R.BASANT, JUDGE)

jsr // True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007